

October 7, 2019

Mr. John Canoles
Eco-Science Professionals, Inc.
P.O. Box 5006
Glen Arm, Maryland 21057

Re: 6803 Schaadts Road
Middle River, Maryland 21220
Critical Area Administrative Variance
DEPS Tracking Number: 06-19-3043

Dear Mr. Canoles:

The Department of Environmental Protection and Sustainability (DEPS) has completed an evaluation your variance request, which proposes to construct a replacement, single-family dwelling on an existing, waterfront lot of record that is part of a subdivision known as Woods at Bay Country. The project will require impacts to 5,480 square feet (sf) of the Critical Area buffer in order construct the dwelling, which will replace the original dwelling that was recently destroyed by fire. This variance request also seeks to reduce the principal building minimum setback from the Critical Area buffer from 35 feet to distances ranging from 16 feet to 30 feet. The requested buffer impacts will result from the construction of the dwelling, associated yard, and a portion of the driveway within the buffer.

The Critical Area buffer encompasses a large portion (approximately 66%) of the site area, constraining development of the property. The relatively small lot size (18,084 sf), the lot's configuration, and the large area of Critical Area buffer (approximately 12,000 sf) present these constraints.

The subject waterfront property, located in the Middle River/Chase section of Baltimore County, is within a Resource Conservation Area of the Chesapeake Bay Critical Area. It is one of four adjoining lots located on the waterfront of the peninsula that is part of the subdivision. The property currently contains lawn area, a bulkhead, and a pier. It is bounded to the north by Railroad Creek and Bird River, to the east and west by a residential lot and Railroad Creek, and to the south by approximately 75 contiguous acres of forest, owned by the Homeowner's Association of Woods at Bay Country. The remaining, approximately 65 lots that comprise the subdivision are located immediately south of the forested area, along Harewood Road.

The Director of DEPS may grant a variance from the Chesapeake Bay Critical Area regulations in accordance with regulations adopted by the Critical Area Commission concerning variances as set forth in COMAR 27.01.11. There are five (5) criteria listed in COMAR 27.01.11 that shall be used to evaluate the variance request. All five of the criteria must be met in order to approve the variance.

The first criterion requires that special conditions exist that are peculiar to the land or structure, and that literal enforcement of the regulations would result in unwarranted hardship. The majority of the property (66%) consists of Critical Area buffer. The proposed dwelling has a similar footprint (26'X43') when compared to other dwellings in the subdivision. After consideration of all alternatives and constraints, and providing a reasonable yard area, the alternative shown on the plan submitted with this variance request is the preferred alternative, while also keeping in mind that this proposed dwelling is a replacement for a dwelling that was destroyed by fire, but built in 2002, subsequent to the Critical Area regulations. In addition, the location of the replacement dwelling is a greater distance landward, and smaller than the original dwelling. Literal enforcement of the regulations would constitute an unwarranted hardship. Therefore, the first criterion has been met.

The second criterion requires that a literal enforcement of the regulations would deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area. The applicant would be deprived of the ability to reconstruct a dwelling in a similar location on the property and the use of a practical yard, both of which are enjoyed on similar properties in the area, if there were literal enforcement of the buffer and buffer setback requirements. Therefore, the second criterion has been met.

The third criterion requires that granting of a variance will not confer upon an applicant any special privilege that would be denied to other lands or structures within the Critical Area. The construction of the dwelling and the associated residential uses within the Critical Area buffer on a similar property with similar constraints, and under similar circumstances would not be denied, if all other criteria for a Critical Area Variance were met. Therefore, the third criterion has been met.

The fourth criterion requires that a variance is not based upon conditions or circumstances which are the result of actions by the applicant, nor does the request arise from any condition relating to land or building use, either permitted or non-conforming, on any neighboring property. Site work or construction has not started on the property, and the applicant is not requesting this variance due to conditions on neighboring properties. Therefore, the fourth criterion has been met.

The fifth criterion requires that granting of the variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area, and that the granting of the variance will be in harmony with the general spirit and intent of the Critical Area regulations. The construction of the dwelling will have no direct impacts to tidal waters, tidal wetlands, non-tidal wetlands or tributary streams (fish habitat) since no activities are proposed in these resources. Water quality may be enhanced by the proposed mitigation. According to the plan with this variance, 5,480 sf of buffer impacts shall be mitigated at a ratio of 3:1 (16,440 sf). This will be accomplished with 5,550 sf of onsite planting, and the remaining 10,890 sf will be addressed by the payment of a fee-in-lieu of planting in the amount of \$1.50 per sf (\$16,335.00). Therefore, the construction of the dwelling and driveway within the buffer will result in minimal adverse effects to plants or wildlife, and water quality impacts can be minimized with mitigation to improve the buffer. Granting of this variance will be in harmony with the spirit and intent of the Critical Area Regulations. Therefore, the fifth criterion can be met with mitigation.

Based upon our review, this Department finds that the first four of the above criteria have been met, and that the fifth criterion can be met by planting native trees and shrubs within the Critical Area buffer and full implementation of an approved Critical Area Management Plan. Therefore, the requested variance is hereby approved in accordance with Section 33-2-205 of the Baltimore County Code with the following conditions:

1. Mitigation for 5,480 sf of Critical Area buffer impacts shall be addressed as stated above. Fees-in-lieu must be paid prior to the issuance of any permit. Mitigation planting proposed as part of the Critical Area Management plan must be completed prior to approval of the User & Occupancy Certificate.
2. An approved, final Critical Area Buffer Management Plan, per COMAR 27.01.09.01, must be approved prior to the issuance of any permit.
3. A Critical Area Buffer Management Plan performance security, via an Environmental Agreement shall be posted prior to the issuance of any permit. The Security amount shall be based on 110% of the total, approved cost estimate, including materials and labor.
4. Add the following note to all plans for this project, including the Critical Area Management Plan: "A Critical Area Variance was granted by the Baltimore County Department of Environmental Protection and Sustainability from the Baltimore County Code, Article 33, Environmental Protection and Sustainability, Title 2, Chesapeake Bay Critical Areas Protection for the

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purposes of impacting 5,480 square feet of the Critical Area buffer and to reduce the 35-foot principal building setback for the construction of a replacement single-family dwelling, driveway and associated yard. Variance approval conditions include onsite planting, payment of a fee-in-lieu of planting, and the posting of a performance security. These conditions were placed on this variance to reduce water quality impacts.”

It is the intent of this Department to approve this variance subject to the above conditions. Changes in site layout may require submittal of revised plans and an amended variance request. Please be advised that Baltimore County may not issue a permit for the activity that was the subject of the variance application until 30 days after variance approval, pursuant to Natural Resources Article, Section 8-1808 (d))6)(ii).

Please sign the statement on the following page, and return the original copy of this letter to this Department. Failure to return a signed copy of this letter may result in delays in processing of permits or other development plans for the subject property, and/or may render this variance null and void.

If you have questions regarding this project, please contact Thomas Panzarella at 410-887-3980.

Sincerely,

David V. Lykens
Director

DVL:tcp

c: Ms. Susan Makhoul, Critical Area Commission

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I/We have read and agree to implement the above requirements to bring my/our property, located at 6803 Schaadts Road, into compliance with the Chesapeake Bay Critical Area regulations.

Property Owner(s) Signature(s) (All Owners Must Sign)

Date

Printed Name(s) of Owner(s)